



OFFICE OF THE POLICE COMMISSIONER
ONE POLICE PLAZA • ROOM 1400

December 11, 2017

Memorandum for: Deputy Commissioner Trials

Re: **Police Officer John King**
Tax Registry No. 925545
Applicant Processing Division
Disciplinary Case No. 2016-15593

The above named member of the service appeared before the Court on May 2, and May 24, 2017, charged with the following:

DISCIPLINARY CASE NO. 2016-15593

1. Said Detective John King, while assigned to the Applicant Processing Division, on or about and between November 22, 2015 and February 22, 2016, engaged in conduct prejudicial to the good order, efficiency or discipline of the Department in that Detective King wrongfully ingested an anabolic agent, to wit; 1- Testosterone without police necessity or authority to do so. (*As Amended*)

P.G. 203-10, Page 1, Paragraph 5

GENERAL REGULATIONS

2. Said Detective John King, while assigned to the Applicant Processing Division, on or about and between November 22, 2015, and February 22, 2016, engaged in conduct prejudicial to the good order, efficiency or discipline of the Department in that Detective King wrongfully possessed an anabolic agent, to wit; 1- Testosterone without police necessity or authority to do so. (*As Amended*)

P.G. 203-10, Page 1, Paragraph 5

GENERAL REGULATIONS

In a Memorandum dated November 8, 2017, Assistant Deputy Commissioner Paul M. Gamble found Police Officer John King Guilty of both Specifications in Disciplinary Case No. 2016-15593. Having read the Memorandum and analyzed the facts of this matter, I approve the findings, but disapprove the penalty.

In addition to the recommended penalty of the forfeiture of thirty (30) suspension days (previously served), an additional thirty (30) suspension days (to be served), and placement on one (1) year dismissal probation, Police Officer King will also be subject to two random drug screening tests, including but not limited to testing for anabolic steroids, during said period of dismissal probation.

It is therefore directed that a post-trial negotiated agreement reflecting these terms be implemented immediately. If Police Officer King does not agree to the terms of this agreement as noted, this Office is to be notified without delay.


James P. O'Neill
Police Commissioner



POLICE DEPARTMENT CITY OF NEW YORK

November 8, 2017

MEMORANDUM FOR: Police Commissioner

Re: Police Officer John King
Tax Registry No. 925545
Applicant Processing Division
Disciplinary Case No. 2016-15593

Charges and Specifications:

1. Said Detective John King, while assigned to the Applicant Processing Division, on or about and between November 22, 2015, and February 22, 2016, engaged in conduct prejudicial to the good order, efficiency or discipline of the Department in that Detective King wrongfully ingested an anabolic agent, to wit; 1-Testosterone without police necessity or authority to do so. *(As Amended)*
P.G. 203-10, Page 1, Paragraph 5 – GENERAL REGULATIONS
2. Said Detective John King, while assigned to the Applicant Processing Division, on or about and between November 22, 2015, and February 22, 2016, engaged in conduct prejudicial to the good order, efficiency or discipline of the Department in that Detective King wrongfully possessed an anabolic agent, to wit; 1-Testosterone without police necessity or authority to do so. *(As Amended)*
P.G. 203-10, Page 1, Paragraph 5 – GENERAL REGULATIONS

Appearances:

For the Department: Scott Rosenberg, Esq. & Daniel Maurer, Esq.
Department Advocate's Office
One Police Plaza
New York, NY 10038

For the Respondent: Stephen Worth, Esq.
Worth, Longworth & London, LLP
111 John Street – Suite 640
New York, NY 10038

Hearing Date:

May 2 and May 24, 2017

Decision:

Guilty

Trial Commissioner:

ADCT Paul M. Gamble

REPORT AND RECOMMENDATION

The above-named member of the Department appeared before me on May 2 and May 24, 2017. Respondent, through his counsel, entered pleas of Not Guilty to the subject charges. The Department called Doctor Gary Green, Police Officer Markland Clarke, Lieutenant Paul Smester, Sergeant Ruslan Seredniy and Doctor Barry Sample as witnesses. Respondent called Detective Frank Moccia as a witness and Respondent testified on his own behalf. A stenographic transcript of the trial record has been prepared and is available for the Police Commissioner's review.

DECISION

After reviewing the evidence presented at the hearing, and assessing the credibility of the witnesses, I find Respondent Guilty of the charged misconduct.

FINDINGS AND ANALYSIS

The following is a summary of the facts which are not in dispute. Respondent purchased bodybuilding products, often marketed as dietary supplements, over the Internet from A1 Supplements on January 26, 2016 (T. 170-171, 189-190; Department's Exhibit ["DX"] 12; Respondent's Exhibit ["RX"] B). One of these products, a Legal Gear Bulking Andro Kit Platinum Series ("Bulking Andro Kit"), was purchased for \$123.95 and bore the following warning label on the box: "This product should not be taken by anyone governed by a regulatory body that prohibits prohormone use. Keep out

of reach of children, Not intended for women, For men over 21 only!" (T. 189-190, 196-197; DX 12, p. 3; DX 3-B, 16-A). The bottle found within the box, which contained the products, bore the following warning on its label: "THIS PRODUCT CONTAINS HORMONES WHICH MAY BE BANNED BY SOME SELECT ORGANIZATIONS" (DX 15-C, 16-B, 16-C). The Bulking Andro Kit is sold at establishments like Sears, Walmart, and numerous health food stores (T. 142, 172-174; RX C, D).

Respondent took the Bulking Andro Kit supplements for 16 days; the duration of the full regimen was 45 days (T. 181-182). On February 22, 2016, Respondent reported to the Medical Division's Drug Screening Unit ("DSU") for random drug testing and provided hair and urine samples (T. 52-54, 168; DX 5, p. 52). The samples were collected following the Department's drug screening protocol, then delivered to Quest Diagnostics for testing (T. 52-62, DX 5-8). Respondent did not disclose his use of the bodybuilding products on the Drug Screening Questionnaire (DX 7).

When conducting anabolic steroid testing for the Department, Quest receives two urine samples which are then transferred to processing staff via an internal chain of custody protocol (T. 115-116). A portion of the first sample is removed from the container and undergoes a screening or initial test using gas chromatography/mass spectrometry ("GC/MS") (T. 116-117). If this initial test comes back positive, a second portion of the original sample undergoes GC/MS once more as a confirmatory test (T. 117). A positive result is reported to the Department only when the initial and confirmatory tests on both samples are positive (T. 117). The Chromatographic Step causes the various sample constituents to separate; the Mass Spectral Identification Step determines the identity of the substance or its "molecular fingerprints" (T. 118-119).

Respondent did not raise any issue regarding the chain of custody of his samples and thereby concedes the authenticity of the results of Quest Diagnostics' laboratory analysis¹ (T. 123-127; DX 18, p. 6).

DX 17 and DX 18 are the laboratory data packages for Respondent's two urine samples. Respondent had two distinct specimens, Specimen A and B, each of which came back positive for the presence of 1-Testosterone metabolites (T. 129-135; DX 17, DX 18). For Specimen A, both the initial and confirmatory tests were positive for the presence of 1-Testosterone and/or its metabolites (T. 129, 131-135; DX 18, pp. 61, 101, 104, 150). Concerning Specimen B, both the initial and confirmatory tests were positive for the presence of 1-Testosterone and/or its metabolites (T. 129, 131-134; DX 17, pp. 63, 175, 178, 181-182). Department Exhibit 2 is a report of the final results from Quest's testing of Specimens A and B (DX 2). Respondent's tests yielded a positive result for the anabolic androgenic agent 1-Testosterone and/or metabolites thereof (T. 19-20, 46-47, 134-135; DX 2; DX 17, pp. 63, 175, 178; DX 18, pp. 61, 101, 104).

Respondent was contacted five to six weeks after the drug screening by Sergeant Montalbon at the Long Island Medical Division ("Medical Division") (T. 168). Sergeant Montalbon advised Respondent that "the hormone level came back just a little high" on his Dole test (T. 169). After Respondent asserted that he was taking supplements, Sergeant Montalbon directed Respondent to appear at the Medical Division on April 8, 2016, and requested that Respondent bring the supplements with him (T. 169-170).

On April 8, 2016, Respondent reported to the Medical Division and surrendered some of the bodybuilding products he had taken (T. 169-170; RX B). Respondent

¹ Since Respondent did not contest the chain of custody of his urine sample from collection by this Department through testing by Quest Diagnostics, the respective testimonies of Police Officer Clark, Sergeant Serebny, and Lieutenant Smester are not summarized herein.

provided fourteen products, including the Bulking Andro Kit, which were invoiced on April 9, 2016, for investigative purposes (T. 66-68, 73-74, 78-79; DX 13; DX 15A; RX B). Detective Edward Young was assigned to be the investigating officer (T. 69). Detective Young photographed the supplements as part of the investigation (T. 69, 82-83, 87-89; DX 12; DX 14A, 14B, 14C, 14D, 14E, 14F, 14G). Detective Young also invoiced eight receipts Respondent provided for the supplements, totaling \$617.25 in purchases (T. 68-69, 83-84; DX 12).

Respondent denied ever knowingly possessing or ingesting an anabolic agent, such as 1-Testosterone (T. 174, 182-183). In addition, Respondent asserted that he was not aware that any of the products he purchased in January 2016 were prohibited by the NYPD (T. 174).

Detective Young sent the supplements to the NYPD Police Laboratory for analysis and two of the ingredients in Respondent's Bulking Andro Kit - items 10A and 13A - tested positive for "Androstenedione" (T. 85-87; DX 4, pp. 1-2); specifically, item 10A corresponded to 1-Androstenedione and item 13A corresponded to 4-Androstenedione (T. 86-87; DX 4, pp. 1-2). As part of the investigation, Detective Young performed "Google" searches for the terms "1-Andro" and "4-Andro," both of which appeared in the list of ingredients on the Bulking Andro Kit packaging (T. 89-90; DX 14A, 14B, 14C, 14D, 14E, 14F, 14G; DX 4). The Google searches resulted in links to Internet web sites which identified "1-Andro" and "4-Andro" as steroids (*Id.*). The laboratory analysis of the Bulking Andro Kit did not reveal the presence of 1-Testosterone (DX 4).

Respondent was suspended on April 8, 2016 (T. 183). In July 2016, Respondent was demoted to the rank of police officer (T. 186).

At issue, in this case, is whether Respondent wrongfully ingested and possessed anabolic agents, specifically 1-Testosterone. Respondent has taken the position that he was unaware that any of the bodybuilding products which he admitted taking contained any anabolic steroids. By a preponderance of the relevant, credible evidence, I find that Respondent did ingest bodybuilding products with the knowledge that they contained 1-Androstenedione and 4-Androstenedione, both of which are anabolic androgenic steroids, as well as being prohormones which metabolize into 1-Testosterone, another anabolic androgenic steroid. I further find that Respondent did wrongfully possess 1-Testosterone within his body, as evidenced by the presence of 1-Testosterone and its metabolites in his urine sample, as a result of the metabolism of the prohormones he ingested.

Dr. Gary Green testified for the Department as an expert in the field of performance-enhancing drugs. He is a physician specializing in sports medicine, as well as a clinical professor at the UCLA School of Medicine, and the medical director of Major League Baseball ("MLB"). Dr. Green is also a consultant on anabolic steroids and performance-enhancing drugs to MLB, the University of California, Los Angeles, and Pepperdine University (T. 10-12; DX 1).

Dr. Green testified that anabolic steroids are either testosterone or synthetic testosterone-type derivatives that have both anabolic and androgenic properties (T. 14). The term "anabolic" refers to substances which promote building up of the body's muscle mass (*Id.*). The term "androgenic" refers to the substances which promote the secondary sexual characteristics in men, such as hair growth and deepening of the voice during

puberty (*Id.*). Anabolic steroids attach to androgen receptors in the body, then increase protein synthesis and muscle mass (T. 15). In addition to changes at the cellular level, anabolic steroids increase aggressiveness and can reduce muscle soreness (*Id.*). Generally speaking, the use of anabolic steroids for muscle enhancement is accompanied by intense physical exercise and the consumption of a high protein diet (*Id.*).

The oral consumption of anabolic steroids carries the risk of liver damage, liver abnormalities, the formation of blood-pooled cysts and hepatic cancer. Anabolic steroid consumption can affect the heart directly, reducing HDL, the "good" cholesterol, to dangerously low levels and possibly causing heart attacks. Anabolic steroids can affect the brain, leading to addiction and suicide. Finally, because the anabolic steroids affect the body's normal production of testosterone, their use can cause shrinkage of the testicles, enlargement of the prostate and prostate cancer (T. 16-17).

1-Testosterone is an anabolic steroid, which is listed as a Schedule III Drug under the Anabolic Steroid Control Act and is "not legally available, either with or without prescription in the United States" (T. 20, 141, 149-150). 1-Androstenedione ("1-Andro") and 4-Androstenedione ("4-Andro") are prohormones or "anabolic steroid metabolites" which, once introduced into the human body, metabolize and convert into 1-Testosterone (T. 22, 113-114, 146-147). 1-Androstenedione and 4-Androstenedione, in addition to being precursors of 1-Testosterone, are each anabolic androgenic steroids listed in Schedule III (T. 28).

After reviewing the Quest Diagnostics laboratory analysis of Respondent's urine samples, Dr. Green confirmed that it revealed the presence of 1-Testosterone and its metabolites in Respondent's urine sample (T. 20; DX 2). Dr. Green also reviewed the

Police Laboratory analysis of the bodybuilding products Respondent surrendered after his positive test result and confirmed that the products contained 1-Androstenedione and 4-Androstenedione (T. 28; DX 4).

Dr. Green opined that Respondent's urine sample testing positive for the presence of 1-Testosterone was caused by introducing 1-Testosterone into the body, either orally or via injection, or by ingesting a prohormone anabolic steroid (T. 20-21, 29, 37, 46-47, 140; DX 2). According to Dr. Green, "prohormones are a way that the supplement industry has tried to subvert the Anabolic Steroid Act by taking a substance that gets converted in the body into the drug that you desire" (T. 21). Dr. Green opined that the consumption of the contents of the Andro Bulking Kit could have caused Respondent's urine sample to test positive for the presence of 1-Testosterone and its metabolites (T. 61, 183; DX 4). Dr. Green asserted that 1-Testosterone could never occur naturally in the body (T. 20-21, 37, 140).

Dr. R.H. Barry Sample is the Senior Director of Science and Technology at Quest Diagnostics (T. 104). Dr. Sample testified for the Department as an expert in the field of forensic toxicology (T. 109). After a review of the contents of Department Exhibits 2, 17 and 18, Dr. Sample testified that the Quest Diagnostics laboratory analysis of each of Respondent's urine samples revealed the presence of 1-Testosterone metabolite (T. 128-129, 133-135; DX 17, 18). Dr. Sample testified further that the conclusion Quest Diagnostics reached after testing the two samples was that Respondent's urine was positive for the presence of 1-Testosterone metabolites (T. 136; DX 2).

Respondent admitted in his testimony to purchasing the Andro Bulking Kit on January 26, 2016, the month before he was subjected to testing (T. 171). Respondent

further affirmed that in his official Department interview, he admitted using and purchasing all the products he supplied to the Medical Division (T. 181). Specifically concerning the Andro Bulking Kit, Respondent asserted that he took the supplements for 16 days, although he purchased a 45-day supply (*Id.*). Respondent denied in his testimony that he ever knowingly ingested or possessed an anabolic agent (T. 174). Respondent testified that he was never informed, and was unaware, that there were anabolic steroid ingredients, which were prohibited by the NYPD, in the Bulking Andro Kit (T. 174; RX B-E). Respondent claimed not to know what a prohormone was; he testified, however, that during his employment with this Department, he previously provided a sample for drug screening (T. 199-200).

Respondent testified that he purchased the bodybuilding products, which he referred to as supplements, conceding that they contained ingredients like creatine and amino acids, with the goals of losing weight, lowering his cholesterol, expediting workout recovery, reducing muscle soreness, and replenishing fluids after workouts (T. 181-182, 191-193). Respondent testified that he had never heard that creatine or amino acids helped build muscle and give the body definition after weight lifting (T. 191-192).

Respondent testified that he never received information about prohormones or the general prohibition against using steroids, such as memoranda from supervisors in his office, or in-service training at his command about steroids and human growth hormones (T. 174-176, 184, 199-200; RX E). Respondent further asserted that he was unaware of Personnel Bureau Memo 44, dated July 1, 2011 (T. 175; RX E). Respondent further testified that he was unaware of the memorandum's substance, never had in-service

training about its contents, and never discussed the memorandum at his command with any superior officer (T. 175).

Respondent denied researching supplements on the Internet and asserted that he went to the Internet to purchase supplements after seeing them advertised in magazines (T. 193-194). When Respondent was questioned about the warning labels on the Bulking Andro Kit and whether they mentioned anything about not taking the product if you work for an organization that tests for prohormones, he testified, "It has one, I don't know if it states that specifically. The second to last sentence on the back of the package stated something about prohormone use" (T. 194, 196; DX 16A; DX 3B). When questioned further about whether the label warned against using the product said "if you are governed by a regulatory body that tests for prohormones," Respondent testified "No, it didn't state that. It didn't use the word test" (T. 195; DX 16A; DX 3B).

Detective Frank Moccia, Respondent's co-worker from the Candidate Assessment Section, testified for Respondent. According to Moccia, no superior officers in their command during his time at CAS from December of 2004 to the present, ever instructed him about the prohibited use of anabolic agents (T. 153-154, 156-157). In addition, Moccia testified that there was no information, training, or memoranda posted, either at work or at the old Police Academy's gym, concerning the unlawful use of anabolic agents (T. 154). Moccia conceded that he was aware that members of the NYPD are not allowed to possess anabolic steroids (T. 161).

The controlling authority, in this case, is found in Personnel Bureau Memo 44 of 2011. This memorandum defines anabolic steroids as controlled substances listed in Schedule II of the New York Public Health Law (Public Health Law § 3306). Public

Health Law § 3306 defines anabolic steroids as any drug or "hormonal substance" that is chemically and pharmacologically related to testosterone (Public Health Law § 3306 Schedule II [h]). 1-Androstenedione and 4-Androstenedione, two substances listed on the Bulking Andro Kit, are also listed as anabolic steroids in Schedule II (Public Health Law § 3306, Schedule II [h][8], [h][9]). The Memo states definitively that "body building and/or body enhancement are not legitimate medical uses of anabolic steroids and related substances." I take judicial notice that substances listed in Schedule II are also "controlled substances" as defined in Article 220 of the New York Penal Law. I take further judicial notice of Schedule III of the Federal Controlled Substances Act (21 U.S.C. § 801 *et seq.*).

I credit the testimony of the Department's witnesses, as they were forthright, logical and disinterested in the outcome of this proceeding. Drs. Green and Sample testified as expert witnesses for the Department and were informed within their respective areas of expertise. The analyses, observations, and opinions expressed by each witness in his testimony were corroborated and supported by the testimony of the other.

As set forth above, the credibility of Police Officer Clarke, Sergeant Seredniy and Lieutenant Smester were not challenged by Respondent, since he conceded the accuracy and reliability of the laboratory results contained in Department Exhibits 2 and 4.

Respondent's testimony, in contrast, was self-serving and required suspension of disbelief. His assertion that he did not conduct any online research about the bodybuilding products he purchased online is stunning, especially coming from a former New York City Detective. The packaging for the Bulking Andro Kit Respondent purchased bears a photograph of a heavily muscled man performing a dumbbell curl (DX

3A). This same package displays a statement at the top of the box, which reads, "WARNING: YOU MUST EAT BIG AND LIFT HARD WITH THIS CYCLE" (*Id.*). Finally, the terms "4-ANDRO" and "1-ANDRO," substances prohibited by the Memo, the Public Health Law and the Controlled Substances Act, also appear on the package opposite the weightlifter.

The package also bore a list of "Supplement Facts" which cataloged the contents of the kit containing, among other things, 60 tablets of 4 ANDRO STENELONE and 60 tablets of 1 ANDRO STENELONE, also listed in the Public Health Law and the Controlled Substances Act (DX 3B).

While I credit Respondent's assertion that he did not appreciate the significance of "1-Andro" and "4-Andro" appearing on the package, it was his obligation to check. Whether he did or not is not relevant because a reasonable police officer aware that he was subject to mandatory drug testing should have.

Respondent had been assigned to the Candidate Assessment Section (formerly known as the Applicant Processing Division) since 2004. Respondent was certainly aware that as a Member of the Service, he was subject to random drug screening, which has been in place since 1989; he conceded that he had been tested on one previous occasion. In addition, Respondent was undoubtedly aware that candidates for appointment to this Department are subjected to drug screening. In sum, any Member of Service with Respondent's experience should have been wary of ingesting any substance which could be detectable during a random drug test, let alone ingesting anabolic steroids. Respondent's argument that he had insufficient notice that 1-Testosterone was a prohibited substance is unavailing.

A preponderance of the relevant, credible evidence establishes that Respondent ingested bodybuilding products contained in the Bulking Andro Kit, a product which he purchased knowingly. The packaging of the Bulking Andro Kit bore warning labels which Respondent should have recognized as notice that the substances contained in the supplements could violate the Department's prohibition on the ingestion of anabolic steroids. While there is no evidence in the record that the list of ingredients on the packaging included 1-Testosterone, the package did list "1-Andro," "4-Andro," "1 ANDRO STENELONE" and "4 ANDRO STENELONE." A reasonable police officer in Respondent's position could have conducted a simple Google search to learn that the nomenclature "1-Andro" and "4-Andro" actually stood for 1-Androstenedione and 4-Androstenedione respectively. That same Google search would reveal that 1-Androstenedione and 4-Androstenedione were, and are anabolic steroid prohormones. A further search would have revealed that both of the aforementioned substances are listed as anabolic steroids in Schedule II of Section 3306 of the New York Public Health Law and Schedule III of the Federal Controlled Substances Act (Public Health Law § 3306, Schedule II [h][8], [h][9]; 21 U.S.C. § 801 *et seq.*, Schedule III). Thus, the ingestion of either or both of those anabolic steroids was wrongful.

I find by a preponderance of the relevant, credible evidence that Respondent wrongfully ingested 1-Androstenedione and 4-Androstenedione, each of which is an anabolic androgenic steroid, thereby also qualifying as anabolic agents. Respondent admitted in his official Department interview, and affirmed during his in-court testimony, that he had consumed supplements from the Andro Bulking Kit, tacitly admitting that he ingested 1-Androstenedione and 4-Androstenedione. While these anabolic agents are not

the single anabolic agent outlined in the specification, 1-Testosterone, the proof in the record supports a finding that they are all anabolic agents, thus establishing that Respondent is guilty of the charge. I *sua sponte* amend the specification to strike the language, "to wit: 1-Testosterone" to conform to the proof before the Tribunal (*Dep't of Correction v. Jenkins*, OATH Index No. 3070/09 [Dec. 16, 2009]; *Human Resources Admin. v. St. Louis*, OATH Index No. 895/05 [May 26, 2005], *aff'd*, NYC Civ. Serv. Comm'n Item No. CD07-03-SA [Feb. 9, 2007]; *Dep't of Correction v. Lee*, OATH Index No. 284/88, at 4 [Dec. 2, 1988]; *see also Murray v. Murphy*, 24 N.Y.2d 150, 157, 299 N.Y.S.2d 175, 181 [1969]; *Brown v. Saranac Lake Central School District*, 273 A.D.2d 785, 709 N.Y.S.2d 706 [3d Dep't 2000]).

Accordingly, I find Respondent Guilty of Specification 1, as amended.

I further find that Respondent wrongfully possessed 1-Testosterone, an anabolic androgenic steroid and an anabolic agent, in his urine. Contrary to Respondent's argument, the Department does not have to prove precisely how 1-Testosterone came to be found in Respondent's urine. The expert testimony introduced by the Department established that 1-Testosterone does not naturally occur in the human body. Evidence of the presence of 1-Testosterone in Respondent's urine is evidence that he either ingested it, or a prohormone which metabolized within his system into 1-Testosterone. As the evidence established, it is wrongful to possess 1-Testosterone in the United States, whether in its pure form or in the form of a metabolite as it was found in Respondent's urine. Accordingly, I find Respondent Guilty of Specification 2.

PENALTY RECOMMENDATION

In order to determine an appropriate penalty, Respondent's service record was examined. *See Matter of Pell v. Board of Education*, 34 NY 2d 222 (1974). Respondent

was appointed to the Department on March 1, 2000. Information from his personnel record that was considered in making this penalty recommendation is contained in an attached confidential memorandum.

The Department has requested that Respondent be terminated from his employment. In previous cases of this nature, Respondents have suffered penalties from one-year dismissal probation to termination for possession and usage of steroids (*Disciplinary Case No. 2013-10704* [April 18, 2016])[Ten-year police officer with no prior disciplinary record charged with possessing drug paraphernalia and attempting to possess anabolic steroids is found Guilty. The Police Commissioner ordered that Respondent forfeit 30 days to be served on suspension, forfeiture of 30 vacation days and one-year dismissal probation]; *Disciplinary Case No. 2013-9365* [November 20, 2015][Five-year police officer with no prior formal disciplinary record is found guilty of possessing and ingesting an anabolic steroid, nandrolone. The Court found Respondent's claim of innocent possession and ingestion to be without merit. The Police Commissioner imposed a penalty of vested-interest retirement, forfeiture of 30 previously served suspension days, waiver of all time and leave balances, including terminal leave, and waiver of all suspension days with and without pay, and placement on one-year dismissal probation]; *Disciplinary Case No. 2013-9945* [February 5, 2015][Eight-year police officer with no prior disciplinary record forfeits 31 suspension days already served, is placed on one year dismissal probation, and agrees to immediately file for vested-interest retirement for possessing and ingesting anabolic steroid without police necessity or authority to do so. Respondent's claim of unknowing innocent ingestion was so ill-defined and puzzling as to be completely incredible. PC disapproved ADCT's

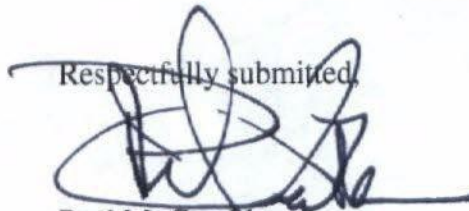
original recommended penalty of dismissal from the Department]; *Disciplinary Case No. 2011-4169* [February 26, 2015][Nine-year police officer with no prior disciplinary record is dismissed from the Department for knowingly and unlawfully possessing an anabolic steroid. The Court found that Respondent's testimony regarding the content of the steroid vials was not forthright. Moreover, unlike some anabolic steroids, the steroid in Respondent's possession could not be legally prescribed in the United States. This makes it comparable to illegal controlled substances, such as marijuana and cocaine, for which the Department has maintained a policy of termination. Respondent pled guilty to operating a motor vehicle while under the influence of intoxicant]).

In this case, there is no evidence to support a finding that Respondent knowingly acquired 1-Testosterone through unlawful means and sought to mask his use with a proffer of bodybuilding products. Even crediting Respondent's admission to using bodybuilding products, his decision to do so, despite the warnings on the packaging that they contained 1-Androstenedione and 4-Androstenedione, both anabolic androgenic prohormones illegal to possess under state and federal law, and the obvious perils of doing so while subject to random drug screening, evinced a lack of judgment rather than a blatant disregard for the law. The Tribunal takes note that Respondent has already suffered the loss of his status as a Detective, as well as 30 suspension days. Respondent's lack of a formal disciplinary record is mitigating in this circumstance. Before this misconduct, Respondent was assigned to a position of trust in this Department, reflecting the regard in which he was held professionally.

I therefore recommend that Respondent be DISMISSED from the New York City Police Department but that his dismissal be held in abeyance for a period of one year

pursuant to Section 14-115(d) of the Administrative Code, during which time he remains on the force at the Police Commissioner's discretion and may be terminated at any time without further proceedings. In addition, I recommend that Respondent be suspended from duty for 30 days, in addition to the forfeiture of the 30 suspension days previously served.

Respectfully submitted,



Paul M. Gamble
Assistant Deputy Commissioner Trials

DISAPPROVED

DEC 11 2017

James L. O'Neil
POLICE COMMISSIONER